

General Information Letter: A notice of deficiency must be sent to the taxpayer's last known address.

May 24, 2007

Dear:

This is in response to your letter dated January 18, 2007, which has been referred to this office for reply. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.ILtax.com.

Your letter states as follows:

I am one of the trustees of the Ms. Z Trust, FEIN XX-XXXXXXX. I am writing to you regarding a question that has come up with the Delinquency Unit / Collection Bureau of the Illinois Department of Revenue (case # XXXX-XXXX). The Delinquency Unit contacted me by telephone on January 10, 2007 about back taxes owed by the Ms. Z Trust on its 1996 taxes. I had not been informed of this matter prior to this date. I was told that the reason for this delay was that all previous communication had been sent to an old address of mine at AVENUE in CITY. My family moved away from that particular address in 1991 to our present address of STREET in CITY. The STREET address is the one that appears on the 1996 IL-1041 tax return form. Why any communication from the Illinois Department of Revenue regarding the 1996 taxes should have been sent to the AVENUE address is beyond me.

What I would like from the Legal Department is a reference or citation to the Illinois Tax Code that might pertain to this matter. Specifically I am interested in the responsibilities of the State of Illinois to inform someone of a situation such as this in a timely manner. I have on-line access to this material, but need to know where to start looking.

I understand that I must pay the taxes due, but I do have questions about my obligation to pay penalties and interest accrued when I am not at fault for most of the delay in payment.

RULING

Section 902(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/902(a)) states:

Except as provided in subsection (b) [relating to judicial review], the Director shall, as soon as practicable after an amount payable under this Act is deemed assessed (as provided in Section 903), give notice to each person liable for any unpaid portion of such assessment, stating the amount unpaid and demanding payment thereof. In the case of tax deemed assessed with the filing of a return, the Director shall give notice no later than 3 years after the date the return was filed. Upon receipt of any notice and demand there shall be paid at the place and time stated in such notice the amount stated in such notice. Such notice shall be left at the dwelling or usual place of business of such person or shall be sent by mail to the person's last known address.

Section 1003(a) of the IITA states:

If any amount of tax imposed by this Act, including tax withheld by an employer, is not paid on or before the date prescribed for payment of such tax (determined without regard to any extensions), interest on such amount shall be paid in the manner and at the rate prescribed in Section 3-2 of the Uniform Penalty and Interest Act for the period from such date to the date of payment of such amount, except that if a waiver of restrictions under Section 907 on the assessment and collection of such amount has been filed, and if notice and demand by the Director for the payment of such amount is not made within 30 days after the filing of such waiver, interest shall not be imposed on such amount for the period beginning immediately after such 30th day and ending with the date of notice and demand.

Section 1005(a) states:

If any amount of tax required to be shown on a return prescribed by this Act is not paid on or before the date required for filing such return (determined without regard to any extension of time to file), a penalty shall be imposed in the manner and at the rate prescribed by the Uniform Penalty and Interest Act.

Section 3-3(b) of the Uniform Penalty and Interest Act ("UPIA" ; 35 ILCS 735/3-3(b)) states:

A penalty of 15% of the tax shown on the return or the tax required to be shown due on the return shall be imposed for failure to pay: (1) the tax shown due on the return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported on an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of additional liability); or (2) the full amount of any tax required to be shown due on a return and which is not shown (penalty for late payment or nonpayment of additional liability), within 30 days after a notice of arithmetic error, notice and demand, or final assessment is issued by the Department. In the case of a final assessment arising following a protest and hearing, the 30-day period shall not begin until all proceedings in court for review of the final assessment have terminated or the period for obtaining a review has expired without proceedings for a review having been instituted. In the case of a notice of tax liability that becomes a final assessment without a protest and hearing, the penalty provided in this paragraph (2) shall be imposed at the expiration of the period provided for the filing of a protest.

Section 3-8 of the UPIA states:

The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department. A taxpayer may protest the imposition of a penalty under Section 3-3, 3-4, 3-5, or 3-7.5 on the basis of reasonable cause without protesting the underlying tax liability.

The Department has promulgated regulations relating to reasonable cause at 86 Ill. Adm. Code § 700.400. In addition, taxpayers may seek a waiver of penalty and interest with respect to an income tax assessment by filing a petition with the Board of Appeals. See 86 Ill. Adm. Code § 210.101.

Department regulations section 210.120 sets forth the situations in which the Board may waive penalty or interest. 86 Ill. Adm. Code § 210.120.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)